

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, et al.,

Defendants.

Case No. 20-CV-05799-LHK

ORDER RE: PRIVILEGE DISPUTES

On September 18, 2020, Defendants will file the documents Defendants produced to the United States Department of Commerce Office of the Inspector General (“OIG”) that would constitute the administrative record or be included in the administrative record in this case (“OIG production”) as well as a privilege log. ECF No. 132. At the September 15, 2020 hearing on allegations of potential non-compliance with the Temporary Restraining Order, Defendants stated that they may assert the deliberative process, attorney-client, attorney work product, and White House privileges as to Defendants’ OIG production.

Multiple United States Magistrate Judges have graciously and generously agreed to rule on the parties’ privilege disputes because of the expedited nature of these proceedings. The Court expresses extreme gratitude to them. The Court also thanks the parties for consenting to having United States Magistrate Judges’ privilege rulings be final and appealable to the Ninth Circuit or the U.S. Supreme Court.

To facilitate the United States Magistrate Judges in ruling on the parties’ privilege disputes, Defendants shall file the OIG production in machine-readable and searchable (“OCRed”) color

format to the extent feasible. Because of the expedited nature of these proceedings, Defendants shall provide for redundancy in case the Court's Electronic Case Filing system has technical difficulties. Accordingly, Defendants shall also produce their OIG production in emailed zip files to lhkpo@cand.uscourts.gov if feasible or via FTP site. Moreover, Defendants' index of the OIG production with titles, dates, persons involved, and Bates ranges shall include a column for privilege rulings and shall be emailed in electronic form to lhkpo@cand.uscourts.gov.

To facilitate the United States Magistrate Judges' review on such an expedited timeframe, Defendants shall email in zip files to lhkpo@cand.uscourts.gov and provide access via FTP site all Defendants' privileged documents by noon Pacific Time on September 19, 2020. The multiple United States Magistrate Judges will review these documents to rule on Plaintiffs' objections.

The Court also orders the parties to file a memorandum by noon Pacific Time on Friday, September 18, 2020, which addresses the following issues:

- The scope of the deliberative process, attorney-client, attorney work product, and White House privileges;
- Examples of the categories or types of documents in this case that may tend to be covered or not covered by each privilege;
- Proposals as to how to streamline the privilege objection review process. The parties shall meet and confer on Thursday, September 17, 2020 to discuss such proposals. One possibility is for the Plaintiffs to identify high priority objections that will be ruled upon before low priority objections.
- A glossary of government actors who may be senders, recipients, creators, reviewers or decisionmakers regarding the census. The glossary shall identify the government actors' name, job title, job responsibilities, and census role or responsibilities.

To facilitate the speedy resolution of privilege disputes, the Court sets the following timeline:

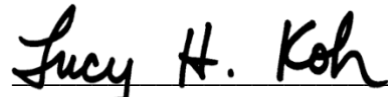
- Plaintiffs shall file any privilege objections by 11 p.m. Pacific Time on September

1 19, 2020.

- 2 • Defendants shall file any response by at 11 a.m. Pacific Time on September 20,
3 2020.

4 **IT IS SO ORDERED.**

5 Dated: September 16, 2020

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7 LUCY H. KOH
8 United States District Judge
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United States District Court
Northern District of California